

Congress of the United States
House of Representatives
Washington, DC 20515

June 12, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Scalia:

Your Department has been working with the Commonwealth of the Northern Mariana Islands to implement the Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) programs, as authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Commonwealth announced this week that applications would be accepted beginning June 17, and, also, announced the exclusion of about half the workforce in the Marianas from eligibility. Given the President's expressed interest in keeping the country from falling deeper into recession, the exclusion of so many workers in the Marianas from the temporary relief provided by PUA and FPUC is a choice I ask you personally to review.

That applications are only now being accepted, almost three months after the President signed the CARES Act, is itself unfortunate. This lengthy delay is, at least in part, because the Commonwealth has no existing unemployment insurance system and must, therefore, construct the mechanisms for accepting, adjudicating, and paying claims from the ground up. Your Department, however, has been helpful to the Commonwealth in making up this deficit.

The lack of a Commonwealth unemployment insurance law also means that the requirements for eligibility, ordinarily defined in state unemployment laws, are not present. As you know, Section 2102 of the CARES Act states that to be eligible an individual must be "able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because [of circumstances related to COVID-19]." Emphasis added.

I have been concerned that in the absence of Commonwealth law, however, certain foreign workers, lawfully present in the Marianas, but now temporarily laid off because of COVID-19 might somehow be excluded from PUA and FPUC. These workers are certified under your Department's Foreign Labor Certification system and hold Commonwealth-only Transitional Worker (CW-1) status granted by the Department of Homeland Security. And these workers, as taxpayers, have generally been eligible for the Economic Impact Payments, also provided by the CARES Act.

Your Office of Congressional and Intergovernmental Affairs had reassured me that it would not be permissible to restrict participation to workers based on citizenship in any U.S. state, because "[i]n order for a state's Unemployment Insurance law to be certified by the Secretary of Labor, it must comply with the Federal Unemployment Tax Act (FUTA). Section 3304(a)(14)(A) of FUTA reads as follows:

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‘...compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed...’ [emphasis added.]

“[Thus,] a non-citizen has the right to unemployment insurance benefits, provided he or she was legally allowed to work at the time the work was performed, that such work is the basis for a claim of unemployment insurance benefits, and he or she meets the other eligibility requirements.”

Unfortunately, however, my concern that CW-1 workers, who meet the CARES Act criteria for eligibility, might be excluded by an administrative overlay by the Commonwealth came to pass. This week’s eligibility announcement did not include aliens, who were lawfully present and authorized to work in the Marianas and who would currently be working except for one of the ten criteria for eligibility specified in Section 2102 of the CARES Act.

Aside from the humanitarian hardship that this exclusion will cause—not to mention the hardship to unemployed U.S. workers by the months-long delay in implementing PUA and FPUC—the economic impact on businesses, which had to lay off CW-1 workers temporarily and upon preparing to re-open may find their employees were unable to hang on without the support the CARES Act was intended to provide, has to be taken into account.

We must do all we can to preserve the ability of individual businesses and the economy, as a whole, to snap back from the coronavirus crisis. I ask that you review the PUA and FPUC implementation by the Commonwealth and provide the necessary guidance from your Department that will help achieve that goal.

Thank you for your consideration.

Sincerely,



GREGORIO KILILI CAMACHO SABLÁN
Member of Congress